

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
HAWAIIAN TELCOM, INC.)
For Approval to Sublease Space at)
900 Kapahulu Avenue, Hon., Hawaii)

DOCKET NO. 2006-0189

DECISION AND ORDER NO. 22808

Filed August 30, 2006
At 11 o'clock A.M.

Michelle S.U.M. Kau
for Chief Clerk of the Commission

RECEIVED
2006 AUG 31 A 8:38
DIV. OF CONSUMER ADVOCACY
DEPT. OF COMMERCE AND
CONSUMER AFFAIRS
STATE OF HAWAII

ATTEST: A True Copy
for KAREN HIGASHI
Chief Clerk, Public Utilities
Commission, State of Hawaii.

Michelle S.U.M. Kau

Hawaii ("Application"),¹ in accordance with HRS § 269-19 and HAR § 6-61-105. According to Hawaiian Telcom, the Property, which is designated as tax map key no. 1-2-7-32-38 consists of approximately 13,381 square feet with a single-level retail building consisting of approximately 2,337 square feet. The Property is subject to a master lease from Safeway, Inc., which will expire on September 14, 2006² ("Master Lease"). According to Hawaiian Telcom, the Property is currently not in use and the sublease payment by Sublessee "will help offset the lease and maintenance costs for this portion of the Site by [Hawaiian Telcom] for the short remainder of [Hawaiian Telcom's] lease."³

According to the terms of the sublease dated July 6, 2006, between Hawaiian Telcom and the Sublessor ("Sublease"), the Sublessor has agreed to pay Hawaiian Telcom base rent of \$1,000 per month plus general excise tax and any additional rent required under the Master Lease for the term of the Sublease, which will expire on the expiration date of the Master Lease,

¹On July 18, 2006, Hawaiian Telcom served copies of the Application on the DIVISION OF CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS ("Consumer Advocate"). The Consumer Advocate is an *ex officio* party to this docket, pursuant to Hawaii Revised Statutes ("HRS") § 269-51 and Hawaii Administrative Rules ("HAR") § 6-61-62.

²It appears from documents filed with the Application that the Master Lease expires on September 14, 2006. However, a prior sublease of the Property, which was approved by the commission in a separate docket, appears to suggest that the Master Lease terminates on September 15, 2006. As the difference appears to be irrelevant for purposes of this decision and order, the commission will utilize the September 14, 2006 date that appears in connection with the Application.

³Application at 2.

September 14, 2006. According to an affidavit submitted by the principal broker of Colliers Monroe Friedlander, Inc., a commercial real estate corporation, the Master Lease between Safeway and Hawaiian Telcom has "no value" as the lease has only two months remaining, and so Hawaiian Telcom is "encouraged" to obtain any rent payment possible during the two remaining months of the lease.⁴

The Sublease contains broad indemnity provisions in favor of Hawaiian Telcom. It also requires the Sublessor to obtain general liability insurance, which the Sublessor has agreed to do. The Sublessor is also required to comply with the Master Lease's requirements of repair and maintenance related to the surrender of the Property to Hawaiian Telcom. The Sublease is subject to commission approval.

B.

Consumer Advocate's Statement of Position

On August 11, 2006, the Consumer Advocate filed its statement of position stating that it does not object to approval of the Application ("Statement of Position"). According to the Consumer Advocate: (1) the sublease of the Property will not adversely affect Hawaiian Telcom's ability to provide telecommunications services; (2) the terms and conditions of the Sublease are reasonable; (3) the fees and charges associated with the Sublease are reasonable; and (4) the Sublease payments are in

⁴Affidavit of Andrew D. Friedlander, attached as Exhibit III to the Application.

the public interest as they help to offset Hawaiian Telcom's rental expense for the short remainder of the Master Lease's term.

II.

Discussion

HRS § 269-19 provides that no public utility corporation shall "sell, lease, assign, mortgage, or otherwise dispose of or encumber the whole or any part of its road, line, plant, system, or other property necessary or useful in the performance of its duties to the public . . . without first having secured from the public utilities commission an order authorizing it so to do." It also states: "Every such sale, lease, assignment, mortgage, disposition, encumbrance, merger, or consolidation, made other than in accordance with the order of the commission shall be void."

Here, Hawaiian Telcom's sublease of the Property appears reasonable and in the public interest. The Property is not currently in use, and any sublease rent obtained by Hawaiian Telcom in the two months until the expiration of the Master Lease can be used by Hawaiian Telcom to offset the costs associated with the Master Lease to the benefit of the ratepayers. In addition, the Sublease of the Property does not appear to adversely affect Hawaiian Telcom's utility operations since it is not utilizing the Property for telecommunications purposes; nor is it likely to do so in the remaining two months of the Master Lease. Finally, the terms of the Sublease appear reasonable and in Hawaiian Telcom's interest. Accordingly, the commission concludes that Hawaiian Telcom's request for approval to sublease the Property

should be approved.

III.

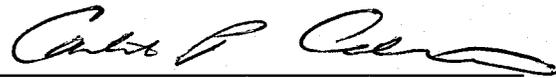
Orders

THE COMMISSION ORDERS:

1. Hawaiian Telcom's request for commission approval to sublease the property located at 900 Kapahulu Avenue is approved.
2. This docket is closed unless otherwise ordered by the commission.

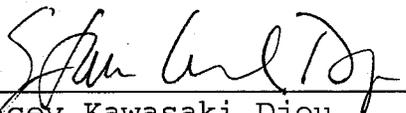
DONE at Honolulu, Hawaii AUG 30 2006.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By 
John E. Cole, Commissioner

APPROVED AS TO FORM:


Stacey Kawasaki Djou
Commission Counsel

2006-0189.eh

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 22808 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
DIVISION OF CONSUMER ADVOCACY
P. O. Box 541
Honolulu, HI 96809

JOEL K. MATSUNAGA
VICE PRESIDENT-EXTERNAL AFFAIRS
HAWAIIAN TELCOM, INC.
P.O. Box 2200
Honolulu, HI 96841

Michelle S.U.M. Kau
for Karen Higashi

DATED: AUG 30 2006